

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Robert G. Taub

Witter Post Office
Witter, Arkansas

Docket No. A2012-14

ORDER AFFIRMING DETERMINATION

(Issued February 1, 2012)

I. INTRODUCTION

On December 15, 2011, the Postal Service advised the Commission that it “will delay the closing or consolidation of any Post Office until May 15, 2012”.¹ The Postal Service further indicated that it “will proceed with the discontinuance process for any Post Office in which a Final Determination was already posted as of December 12, 2011, including all pending appeals.” *Id.* It stated that the only “Post Offices” subject to closing prior to May 16, 2012 are those that were not in operation on, and for which a Final Determination was posted as of, December 12, 2011. *Id.* It affirmed that it “will not close or consolidate any other Post Office prior to May 16, 2012.” *Id.* at 2. Lastly,

¹ United States Postal Service Notice of Status of the Moratorium on Post Office Discontinuance Actions, December 15, 2011, at 1 (Notice).

the Postal Service requested the Commission “to continue adjudicating appeals as provided in the 120-day decisional schedule for each proceeding.” *Id.*

The Postal Service’s Notice outlines the parameters of its newly announced discontinuance policy. Pursuant to the Postal Service’s request, the Commission will fulfill its appellate responsibilities under 39 U.S.C. § 404(d)(5).

On October 17, 2011, Joy Russell (Petitioner) filed a petition with the Commission seeking review of the Postal Service’s Final Determination to close the Witter, Arkansas post office (Witter post office).² The Final Determination to close the Witter post office is affirmed.

II. PROCEDURAL HISTORY

On October 20, 2011, the Commission established Docket No. A2012-9 to consider the appeal, designated a Public Representative, and directed the Postal Service to file its Administrative Record and any responsive pleadings.³

On November 1, 2011, the Postal Service filed the Administrative Record with the Commission.⁴ On December 2, 2011, the Postal Service filed an addendum to the Administrative Record.⁵ The Postal Service also filed comments requesting that the Commission affirm its Final Determination.⁶

² Petition for Review received from Joy Russell regarding the Witter, Arkansas post office 72776, October 17, 2011 (Petition).

³ Order No. 915, Notice and Order Accepting Appeal and Establishing Procedural Schedule, October 20, 2011.

⁴ The Administrative Record is attached to the United States Postal Service Notice of Filing, November 1, 2011 (Administrative Record). The Administrative Record includes, as Item No. 47, the Final Determination to Close the Witter, AR Post Office and Continue to Provide Service by Highway Contract Route Service (Final Determination).

⁵ United States Postal Service Notice of Filing of Addendum to the Administrative Record, December 2, 2011. The notice states that Item No. 52 is being added to the Administrative Record in order “to clarify certain details in Item [sic] Nos. 15, 17, and 24.”(Addendum).

⁶ United States Postal Service Comments Regarding Appeal, December 12, 2011 (Postal Service Comments).

Petitioner filed a participant statement supporting her Petition.⁷ On December 22, 2011, the Public Representative filed a reply brief.⁸

III. BACKGROUND

The Witter post office provides retail postal services and service to 39 post office box customers. Final Determination at 2. Two-hundred-forty (240) delivery customers are served through this post office. The Witter post office, an EAS-11 level facility, has retail access hours of 8:30 a.m. to 4:45 p.m., Monday through Friday, and 9:00 a.m. to 10:45 a.m. on Saturday. Lobby access hours are also 8:30 a.m. to 4:45 p.m., Monday through Friday, and 9:00 a.m. to 10:45 a.m. on Saturday. *Id.*

The postmaster position became vacant on May 1, 2009, when the Witter postmaster retired. A non-career officer-in-charge (OIC) was installed to operate the post office. Retail transactions average three transactions daily (three minutes of retail workload). Post office receipts for the last three years were \$12,959 in FY 2008; \$9,601 in FY 2009; and \$8,301 in FY 2010. *Id.* There is one permit customer. Administrative Record, Item No. 52 (Clarification of Item No. 15). By closing this post office, the Postal Service anticipates savings of \$45,599 annually. Final Determination at 4.

After the closure, retail services will be provided by the Huntsville post office located approximately 11 miles away.⁹ *Id.* at 2. Delivery service will be provided by highway contract route (HCR) service through the Huntsville post office. The Huntsville post office is an EAS-18 level post office, with retail hours of 8:30 a.m. to 4:30 p.m., Monday through Friday, and 10:00 a.m. to 12:00 p.m. on Saturday. One-hundred-sixty-two (162) post office boxes are available. *Id.* The Postal Service will continue to use the Witter name and ZIP Code. *Id.* at 2-3, Concern Nos. 2, 3, 11.

⁷ Participant Statement received from Joy Russell, November 21, 2011 (Participant Statement).

⁸ Reply Brief of the Public Representative, December 22, 2011 (PR Reply Brief).

⁹ MapQuest estimates the driving distance between the Witter and Huntsville post offices to be approximately 11.7 miles (16 minutes driving time).

IV. PARTICIPANT PLEADINGS

Petitioner. Petitioner opposes the closure of the Witter post office. Petitioner contends that the Postal Service failed to consider the effect of the closing on the Witter community and failed to consider whether the alternate service will continue to provide a maximum degree of effective and regular postal services to the community. Petition at 1; Participant Statement at 1-2. Petitioner also argues that 39 U.S.C. § 101(b) prohibits the closing of the Witter post office for operating at a deficit. Participant Statement at 2.

Postal Service. The Postal Service argues that the Commission should affirm its determination to close the Witter post office. Postal Service Comments at 2. The Postal Service believes the appeal raises three main issues: (1) the effect on postal services; (2) the impact on the Witter community; and (3) the economic savings expected to result from discontinuing the Witter post office. *Id.* at 1. The Postal Service asserts that it has given these and other statutory issues serious consideration and concludes that the determination to discontinue the Witter post office should be affirmed. *Id.* at 2, 15.

The Postal Service explains that its decision to close the Witter post office was based on several factors, including:

- the postmaster vacancy;
- a minimal workload and low office revenue;
- a variety of other delivery and retail options (including the convenience of rural delivery and retail service);
- little recent growth in the area;
- minimal impact on the community; and
- expected financial savings.

Id. at 4-5. In addition, the Postal Service notes that the building housing the Witter post office has “severe” deficiencies. Final Determination at 2. The Postal Service contends

that it will continue to provide regular and effective postal services to the Witter community when the Final Determination is implemented. Postal Service Comments at 5.

The Postal Service also asserts that it has followed all statutorily required procedures and has addressed the concerns raised by Petitioner regarding the effect on postal services, the effect on the Witter community, economic savings, and the effect on postal employees. *Id.*

Public Representative. The Public Representative expresses concern that the Postal Service does not know whether it will install cluster box units (CBUs), nor has it selected a location for the CBUs. PR Reply Brief at 2. The Public Representative states that this information is essential to evaluating whether Witter customers will continue to receive effective and regular postal services after closure. The Public Representative also argues that basing the economic savings calculation upon a postmaster salary and assuming that the OIC will be terminated and not reassigned, inflates the economic benefit calculation. The Public Representative also contends that the cost of replacement services should be included in the economic savings calculation as follows: a recurring expense of approximately \$7,955 for delivery service, and a potential one-time expense of \$2,300 for the installation of CBUs. *Id.* Lastly, the Public Representative questions the reasonableness of the distance to the alternative postal retail facility. *Id.* at 2-3.

V. COMMISSION ANALYSIS

The Commission's authority to review post office closings is provided by 39 U.S.C. § 404(d)(5). That section requires the Commission to review the Postal Service's determination to close or consolidate a post office on the basis of the record that was before the Postal Service. The Commission is empowered by section 404(d)(5) to set aside any determination, findings, and conclusions that it finds to be (a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law; (b) without observance of procedure required by law; or (c) unsupported by

substantial evidence in the record. Should the Commission set aside any such determination, findings, or conclusions, it may remand the entire matter to the Postal Service for further consideration. Section 404(d)(5) does not, however, authorize the Commission to modify the Postal Service's determination by substituting its judgment for that of the Postal Service.

A. Notice to Customers

Section 404(d)(1) requires that, prior to making a determination to close any post office, the Postal Service must provide notice of its intent to close. Notice must be given 60 days before the proposed closure date to ensure that patrons have an opportunity to present their views regarding the closing. The Postal Service may not take any action to close a post office until 60 days after its determination is made available to persons served by that post office. 39 U.S.C. § 404(d)(4). A decision to close a post office may be appealed within 30 days after the determination is made available to persons served by the post office. 39 U.S.C. § 404(d)(5).

The Administrative Record indicates the Postal Service took the following steps in reaching its Final Determination. On May 13, 2011, the Postal Service distributed questionnaires to customers regarding the possible change in service at the Witter post office. Final Determination at 2. A total of 279 questionnaires were distributed to delivery customers. Other questionnaires were made available at the retail counter. A total of 87 questionnaires were returned. On May 24, 2011, the Postal Service held a community meeting at Witter Christian Fellowship Church to address customer concerns. *Id.* Forty-two (42) customers attended. Administrative Record, Item No. 24 (Community Meeting Roster).

The Postal Service asserts that the proposal to close the Witter post office with an invitation for comments was posted at both the Witter and Huntsville post offices from June 23, 2011 through August 24, 2011. Final Determination at 2. Similarly, the Postal Service states that the Final Determination was posted at both post offices from September 29, 2011 through October 31, 2011. Postal Service Comments at 4.

While the Postal Service claims that both the proposal to close the Witter post office and the Final Determination were posted at the Witter and Huntsville post offices, neither the proposal, nor the Final Determination, displays a round-date stamp for the Huntsville post office. See Administrative Record, Item Nos. 33, 47. The omission of a round-date stamp with respect to the Huntsville post office is inconsequential in this appeal. The Administrative Record reflects active participation by customers as evidenced by the filing of questionnaires, attendance at the community meeting, and the filing of comments on the proposal.

The Postal Service has satisfied the notice requirements of 39 U.S.C. § 404(d).

B. Other Statutory Considerations

In making a determination on whether or not to close a post office, the Postal Service must consider the following factors: the effect on the community; the effect on postal employees; whether a maximum degree of effective and regular postal service will be provided; and the economic savings to the Postal Service. 39 U.S.C. § 404(d)(2)(A). The Postal Service must also comply with the provisions of 39 U.S.C. § 101(b), which prohibits closing any small post office solely for operating at a deficit.

Effect on the community. Witter, Arkansas is an unincorporated community located in Madison County, Arkansas. Administrative Record, Item No. 16 (Community Survey Sheet). The community is administered politically by the Madison County Judge's Office. Police protection is provided by the Madison County Sheriff's Office. Fire protection is provided by the Witter Aurora Volunteer Fire Department. The community is comprised of farmers, retirees, the self-employed, and those who commute to work in nearby communities. *Id.* Residents may travel to nearby communities for other supplies and services. See *generally* Administrative Record, Item No. 22 (returned customer questionnaires and Postal Service response letters).

As a general matter, the Postal Service solicits input from the community by distributing questionnaires to customers and holding a community meeting. The Postal Service met with members of the Witter community and solicited input from the

community with questionnaires. In response to the Postal Service's proposal to close the Witter post office, customers raised concerns regarding the effect of the closure on the community. Their concerns and the Postal Service's responses are summarized in the Final Determination. Final Determination at 2-3.

Petitioner and others raised the issue of the effect of the closing on the Witter community. Petition at 1. The Postal Service contends that a community's identity derives from the interest and vitality of its residents and their use of its name, and that Witter customers would be able to retain the Witter name and ZIP Code in addresses. Postal Service Comments at 10.

The Postal Service has adequately considered the effect of the post office closing on the community as required by 39 U.S.C. § 404(d)(2)(A)(i).

Effect on employees. The Postal Service states that the Witter postmaster retired on May 1, 2009 and that an OIC has operated the Witter post office since then. Final Determination at 2. It asserts that after the Final Determination is implemented, the temporary OIC may be separated, although attempts will be made to reassign the employees to authorized positions at a nearby facility. *Id.* at 4. No other Postal Service employee will be adversely affected. *Id.*

The Postal Service has considered the possible effects of the post office closing on the OIC and has satisfied its obligation to consider the effect of the closing on employees at the Witter post office as required by 39 U.S.C. § 404(d)(2)(A)(ii).

Effective and regular service. The Postal Service contends that it has considered the effect the closing will have on postal services provided to Witter customers. Postal Service Comments at 5. It asserts that customers of the closed Witter post office may obtain retail services at the Huntsville post office located 11 miles away. Final Determination at 5. Delivery service will be provided by HCR service through the Huntsville post office. *Id.* The Witter post office box customers may obtain Post Office Box service at the Huntsville post office, which has 162 boxes available. *Id.* at 2

For customers choosing not to travel to the Huntsville post office, the Postal Service explains that retail services will be available from the carrier. Postal Service

Comments at 3, 8. The Postal Service adds that it is not necessary to meet the carrier for service since most transactions do not require meeting the carrier at the mailbox. *Id.* at 9.

Petitioner argues that travel to the Huntsville post office will be inconvenient. Petition at 1; Participant Statement at 1. Similarly, the Public Representative “suggests that the Commission require the Postal Service to disclose its standards on time and distance” and that if the Postal Service fails to do so, the Commission “should establish standards for evaluating this issue.” PR Reply Brief at 2-3. The Postal Service argues that HCR carriers can perform many functions that will avert the need to travel to any post office. Postal Service Comments at 8.

Petitioner also expresses concerns regarding the availability of special postal services, such as Certified Mail and mail security. Petition at 1; Participant Statement at 2. The Postal Service explains that it makes available several options for customers who choose to utilize HCR service and receive accountable mail, but are unable to be home during the week to sign for such mail. Postal Service Comments at 7. Further, the Postal Service explains that customers may place a lock on their mailboxes and instruct the carriers to sound their horns when they arrive in order to facilitate financial transactions. *Id.*

Finally, the Public Representative states his concern over the continuing ambiguity over whether, and if so, where the Postal Service will install CBUs. PR Reply Brief at 1-2. As a general matter, any proposal to close a post office should provide customers with such information so that they can evaluate and comment on the adequacy of replacement service.

The Witter post office serves 39 post office box customers and 240 delivery customers. Information on the use and location of CBUs was apparently not provided prior to the issuance of the Final Determination. CBUs are an optional form of delivery. In this situation, there may not be demand for that form of delivery. But the possibility remains that CBUs will be installed. See Addendum, Item 52 at 1-A.

The Postal Service has considered the issues raised by customers concerning effective and regular service as required by 39 U.S.C. § 404(d)(2)(A)(iii).

Economic savings. In its Final Determination, the Postal Service estimates total annual savings of \$45,599. Final Determination at 4. It derives this figure by summing the following costs: postmaster salary and benefits (\$44,279) and annual lease costs (\$1,320). The annual cost for replacement service is shown to be \$0. *Id.*

The Addendum filed on December 2, 2011 clarifies the cost savings estimate by noting that although there would be no immediate cost increase for highway contract route service provided to new customers, an additional annual expense of \$7,955 could be incurred upon expiration of the current contract with the HCR carrier on March 31, 2012. Addendum, Item 52 at 1-A. In addition, if the Postal Service decides to provide CBUs, the cost of three units would be approximately \$2,300. Finally, the Administrative Record indicates that the lease for the Witter post office does not include a release clause, but expires on June 30, 2012. Administrative Record, Item No. 15. The Postal Service nevertheless projects annual rental cost savings of \$1,320. Final Determination at 4.

The Public Representative makes several points regarding the Postal Service's projected economic savings. First, he argues that the use of the postmaster's salary, rather than the actual salary of the OIC, in the calculation of economic savings is problematic. PR Reply Brief at 2. Second, he asserts that the estimated savings should be reduced by the recurring expense of \$7,955 for HCR service as of March 31, 2012, and by the one-time expense of \$2,300 for CBUs. *Id.*

The Postal Service acknowledges that "[t]here is a possibility that this savings could be reduced slightly if the Postal Service decided to provide Cluster Box Units, at a one time cost of \$2,300 for 3 units, or when the current HCR contract expires on March 31, 2012." Postal Service Comments at 11 (footnote omitted).

The Witter post office postmaster retired on May 1, 2009. Final Determination at 2. The post office has since been staffed by a non-career OIC who, upon discontinuance of the post office, may be separated from the Postal Service. Final

Determination at 4. The postmaster position and the corresponding salary will be eliminated. *See, e.g.*, Docket No. A2011-67, United States Postal Service Comments Regarding Appeal, October 24, 2011, at 13; Docket No. A2011-68, United States Postal Service Comments Regarding Appeal, November 2, 2011, at 10. Furthermore, notwithstanding that the Witter post office has been staffed by an OIC for more than 2 years, even assuming the use of the presumably lower OIC salary, the Postal Service would have satisfied the requirements of section 404(d)(2)(A)(iv).

Finally, issues raised with respect to possible replacement costs of service remain speculative. Should the Postal Service incur additional expenses, actual savings may be somewhat lower than estimated savings. Moreover, the lease will expire in June 2012. Given its imminent termination, its inclusion in the savings estimate is not improper.

The Postal Service has satisfied the requirement that it consider economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

Section 101(b). Section 101(b) prohibits closing any small post office solely for operating at a deficit. Petitioner alleges that the Postal Service is closing the Witter post office solely for economic reasons. Participant Statement at 2.

To be sure, economics plays a role in the Postal Service's decision. However, the Commission is not prepared to conclude that the Postal Service's determination violates section 101(b). In addition to considering workload at the Witter post office (revenues declining and averaging only three retail transactions per day), the Postal Service took into account other factors such as severe deficiencies in the building occupied by the Witter post office, the postmaster vacancy, the minimal impact on the community, and expected financial savings. Final Determination at 2, 5. In addition, it considered the alternate delivery and retail options available to customers. *Id.* at 5.

The Postal Service did not violate the prohibition in section 101(b) on closing the Witter post office solely for operating at a deficit.

VI. CONCLUSION

The Postal Service has adequately considered the requirements of 39 U.S.C. § 404(d). Accordingly, the Postal Service's determination to close the Witter post office is affirmed.

It is ordered:

The Postal Service's determination to close the Witter, Arkansas post office is affirmed.

By the Commission.

Ruth Ann Abrams
Acting Secretary

DISSENTING OPINION OF CHAIRMAN GOLDWAY

The Administrative Record is inaccurate with regard to economic savings. As such, the Postal Service has not adequately considered economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv).

The Postal Service argues that savings should be calculated based on a full-time postmaster's salary. Yet the Witter post office has been operated by a non-career officer-in-charge (OIC) since the former postmaster retired on May 1, 2009. On the one hand, the Postal Service argues that the effect on employees of this closing will be minimal because only a non-career OIC will be eliminated; yet on the other hand, it argues that the savings should be calculated using a full-time postmaster position.

The Postal Service already claims billions of dollars in savings from reducing labor costs. I believe the savings from substituting OICs in postmaster positions throughout the nation have already been included in those billions. There are inherent and blatant contradictions in the Administrative Record that must be corrected on remand.

In addition, the economic analysis identified in the Final Determination does not account for the costs of replacement of rural or contract delivery service for the 39 customers currently provided post office boxes.

It is not the statutory responsibility of the Commission to correct the Administrative Record for the Postal Service and certainly not to make its own surmise about what and/or whether there would be savings if accurate data was in the Administrative Record. Therefore, the decision to close should be remanded to the Postal Service to correct the Administrative Record and present a more considered evaluation of potential savings.

I am also concerned about the more than 11 miles driving distance between the Witter post office and the Huntsville post office offered as a substitute. Several members of Congress have publicly expressed concern that post offices that are 10 miles apart should be maintained in rural areas. The Postmaster General has expressed interest in finding other ways to serve such distant post offices rather than close them altogether. Recent legislation has been introduced precluding the closure of a post office in cases where the nearest post office is more than 10 miles away. The Commission, in its recent Advisory Opinion (Docket No. N2011-1), found that using optimization modeling, the Postal Service could make better choices about which post offices to close that would assure adequate access in rural areas.

Moreover, the Postal Service recently announced a moratorium on post office closings. It is confusing and perhaps unfair to require some citizens whose post offices have received a discontinuance notice as of December 12, 2011 to gather evidence and pursue an appeal to the Commission, while others whose post offices were in the review process, but had not yet received a discontinuance notice by December 12, 2011 have the respite of a 5-month moratorium.

The citizens of Witter, Arkansas and their concerns regarding the loss of a neighborhood post office should be afforded the same opportunity to be heard and considered as the citizens of the approximately 3,700 post offices fully covered by the moratorium.

Ruth Y. Goldway

DISSENTING OPINION OF VICE CHAIRMAN LANGLEY

The Postal Service did not adequately consider the economic savings as required by 39 U.S.C. § 404(d)(2)(A)(iv). The Postal Service should take into consideration that a non-career postmaster relief (PMR) has been in charge of this facility since May 2009, not an EAS-11 postmaster, and reflect the PMR's salary and benefits in its cost savings analysis. As a government entity, the Postal Service should ensure that its cost/benefit analysis accurately identifies capturable cost savings and does not overstate savings.

The Public Representative questions the estimate of cost savings and full disclosure of the type of delivery service that will be provided to the Witter community. In particular, the Public Representative notes that the Postal Service will incur a potential one-time expense for the installation of cluster box units. PR Comments at 2. The Postal Service should include this expense in its economic savings. It should also adjust the economic savings to reflect the cost of replacement service, which surely must be greater than \$0. While these additional costs will not be contractually authorized until after March 31, 2012, at the earliest, it would appear that as of April 1, 2012, at least some additional costs will be incurred. Addendum at 1.

I find that the Administrative Record evidence does not support the Postal Service's decision to discontinue operations at the Witter post office and should be remanded.

Nanci E. Langley